Herider Farms, Inc. *and* United Food and Commerical Workers, AFL-CIO, Local 540. Cases 16-CA-8856, 16-CA-9142, and 16-RC-8118

May 7, 1982

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On May 20, 1981, Administrative Law Judge David G. Heilbrun issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief. The Charging Party filed cross-exceptions and a supporting brief. In addition, the Charging Party filed a responding brief to Respondent's exceptions; and Respondent filed responding briefs to the Charging Party's cross-exceptions and the Charging Party's responding brief. The General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions[1] and briefs and has decided to affirm the rulings,[2] findings,[3] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Herider Farms, Inc., Nacogdoches, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that the election in Case 16-RC-8118 held on May 7, 1980, be, and it hereby is, set aside, and that case is hereby remanded to the Regional Director for Region 16 for the purpose of scheduling and conducting a second election at such time as he deems that circumstances permit a free choice on the issue of representation.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge: This matter was heard in Nacogdoches, Texas, during July and August 1980, based on a consolidated complaint alleging that Herider Farms, Inc., herein called Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the Act, by discriminatorily discharging Regina Blackshire and Mack Tutt because of their activities on behalf of United Food and Commercial Workers, AFL-CIO, Local 540, herein called the Union, and/or because they engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, and by also engaging in various acts over a period spanning December 11, 1979, to May 7, 1980, that interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act; and based further on the Regional Director's Report on Objections concluding that 23 timely filed and remaining objections to conduct affecting the results of an election conducted on May 7, 1980, raised substantial and material factual issues, many of which were coextensive with the allegations of the consolidated complaint, and which were therefore best resolved through a hearing.

Upon the entire record,[1] my observation of the witnesses, and consideration of the post-hearing briefs,[2] I make the following:

FINDINGS OF FACT AND RESULTANT CONCLUSIONS OF LAW

Respondent operates poultry processing facilities at Nacogdoches and nearby Lufkin, Texas, where at times past the Union represented hourly employees.[3] Such representational standing ended in 1978 upon decertification elections at the separate locations.[4] In mid-1979, investigatory campaigning was commenced at both plants by Bunn Butler, an International representative of the Union. The Lufkin operation was thereafter closed in

[1] In the absence of exceptions we adopt, *pro forma*, the Administrative Law Judge's recommendation to overrule the Union's Objections 3, 7, 8, 9, 10, 12, and 14, to conduct affecting the May 7, 1980, election.

[2] Respondent and the Charging Party have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] In the absence of exceptions, we affirm the Administrative Law Judge's finding that Respondent did not violate Sec. 8(a)(1) of the Act when it made "Vote No" stickers available at the employees' check-in table.

[1] Certain errors in the transcript are hereby noted and corrected.

[2] The Charging Party enlarged on its brief by letter dated October 20, 1980, to which there was a countering reply from Respondent dated November 25, 1980.

[3] In the course and conduct of its described business Respondent annually purchases and receives goods valued in excess of $50,000 directly from points outside Texas, while selling and delivering goods and products valued in excess of $50,000 directly to points outside Texas. On these admitted facts, I find it to be an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act, and otherwise that the Union is a labor organization within the meaning of Sec. 2(5).

[4] The Union as presently constituted is a merged labor organization having previously been Local 540, Amalgamated Meatcutters and Butcher Workmen of North America, AFL-CIO.

November 1979, and numerous employees transferred to a newly established second shift function in Nacogdoches.[5] Butler converted his campaign to an active organizational basis on December 3, 1979, focusing it on the Nacogdoches plant where he had already established employee contacts. Ultimately, a petition was filed on March 10, 1980, and, pursuant to a later Decision and Direction of Election, a vote by secret ballot was conducted on May 7, 1980, in a unit of regular production and maintenance employees. "Inside and outside plant cleanup" and "lead persons" were among the several particular occupations included within the voting unit, while customary exclusions obtained. A majority of the valid votes and challenged ballots counted after the election were not cast for the Union, and thereafter a group of objections were timely filed. Of the original number there are now 21 still pressed for resolution. The Regional Director found that Objections 3–5, 10, 14, and 15–20 were coextensive with allegations in the complaint as violative of Section 8(a)(1).[6] It is implicit that Objection 1 relating to the termination of Mack Tutt is also coextensive with an allegation that Section 8(a)(3) was violated in regard to him, while the Charging Party has taken the position that Objections 11 and 23 are coextensive with paragraph 7(b) of the complaint, listing certain conduct as assertedly violative of Section 8(a)(1). The remaining unwithdrawn objections are set forth verbatim as:

> 3. During election Guard followed discharged employee, Mack Tutt, into voting area intimidating employees waiting to vote.
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> 7. During the election, supervisor, Johnny Garcia, told a group of employees wearing "vote no" stickers, "You all go on and vote."
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> 8. During the election company observer was hugging employees as she released them to go vote and placed her hand affectionately on their shoulders.
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> 9. During the election the company observer was walking around polling area observing line of voters and opening [the] door for them.
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> 10. During the election supervisor, Buddy King, was asked by the company observer, "Where are the maintenance employees?" He said, "Scattered all over the plant." She said, "Go tell them to go and vote." He left and soon the maintenance employees showed up to vote.
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> 12. Union, company and NLRB had agreed on three (3) observers each. The company insisted on four (4) at the pre-election conference and the Union objected. Board agent allowed it anyway.
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> 14. Shortly before the polls were re-opened for second round of voting, employee, Ascencion Aguirre, was refused entrance to the plant. The guard said he had orders to keep him out until the Union Representative came with him. The *Company* Observers were allowed to enter by themselves and *unescorted*.
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> * * * * *
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> 24. The company transferred an employee to a less desirable job because of his union activity.

The period of December 1979 to May 7, 1980, is a general time frame for most salient facts of this case.[7] Within it Regina Blackshire was discharged on December 11, after about 4 weeks of probationary employment as a deboner, and following a hiatus in significant happenings Ascencion (Shaun) Aguirre was hired on February 6. Aguirre had in fact been asked by Butler to seek employment with Respondent and simultaneously function as a compensated part-time agent of the Union to aid its organizing effort.[8] As would befit such a person, Aguirre testified extensively to remarks and happenings over the entire preelection period, particularly as relating to a supervisory status issue concerning Craig Lawson, an individual performing lead person duties in the plant services department during the early months of 1980.

A separate phase of the evidence involves Respondent's director of industrial relations, who held two series of group meetings with employees at which he electioneered. Each series comprised about 6–7 meetings per day for 4 consecutive days, and at each meeting from 10–30 employees were in attendance. The first series commenced in early April, and the second series commenced late that month with the final day of meetings being not later than May 1. Other spirited campaigning had been undertaken by both parties, and on April 28 Aguirre handbilled at the plant gate with a sheet picturing himself bilingually urging a yes vote in the imminent election. Another bilingual handbill was passed out on May 1, again containing Aguirre's visage but this time with employees Mack Tutt and Billie Joe Pleasant also pictured. Among the words graphically attributed to Tutt was that he supported Aguirre in "*OUR* Fight for the Union" and that he emphatically urged a yes vote.

Tutt had initially worked at Respondent's plant for about 6 weeks starting in July. Following a period of layoff he returned to work about January 10 to the position of laborer in a packing department with continuous employment through May 2. Tutt was discharged on

[5] This closing was characterized to be of indefinite duration at the time it occurred; however, operations did in fact resume there in late May 1980, and numerous employees from Nacogdoches, presumably including many who had previously worked at Lufkin, were methodically transferred back.

[6] Objections 3 and 10 were inadvertently included in this group, but in fact are unrelated to any part of the complaint. Conversely, Objections 6 and 22 are coextensive with pars. 7(g) and (n), respectively.

[7] All dates and named months falling in July–December are in 1979, while all dates and named months falling in January–June are in 1980, unless in either case expressly indicated otherwise.

[8] The United States Supreme Court has recognized this phenomenon in summarizing certain facts of a case as involving an "undercover agent" of a contending labor organization being "infiltrated into" a company's employ. *Central Hardware Co.* v. *N.L.R.B.*, 407 U.S. 539 (1972).

May 5, and next returned to the plant during the afternoon of May 7 to vote. By this time Plant Manager Leland Boyd had instructed Cleo Page, a guard/weighmaster ordinarily stationed at the plant gate, that as a discharged employee Tutt was to be escorted into and back out of the voting area should he appear.

The election had been arranged in rather typical fashion culminating in a preelection conference on May 6. By this time the employee breakroom had been determined as a voting place, and each party was to have three observers for the split voting periods of 6–8:30 a.m. and 2:30–4:30 p.m. The breakroom was essentially square shaped and two doors were located along its west wall. Furniture and table groupings were positioned to provide seating for observers along the easterly side of the room and to guide the flow of voting employees in and out of the room. The actual voting booths were set up at the north end. A lunchroom extension area was under construction behind the east wall, and along this a third door existed which led to the outside after one had traversed a final building width where the construction was under way. The plant timeclock was situated in the southeasterly corner of the room.

In course of the preelection conference Respondent's counsel stated that it would augment its observer group by assigning personnel clerk Carol Clayton to release voters based on her extensive familiarity with the plant and its various operations. Both Butler and Union Business Representative Allen Lewis objected to this on grounds that an extra observer would give Respondent undue advantage, and that the Union had relied on a previous understanding that each side would equally have but three designated observers. When Respondent's counsel was adamant that Clayton was needed to avoid production disruptions and better coordinate the releasing process, Butler and Lewis vigorously protested the matter. The assigned Board agent noted this disagreement but advised that the fourth company observer would be permitted insofar as official workings of the election were concerned.

A second major controversy as to election mechanics stemmed from the timeclock placement. Butler and Lewis each testified that, in face of the Board agent's point that something needed to be done to insulate the voting area from timecard usage, Respondent's officials offered to mount a partition that would segregate the room's southeasterly corner. Palmer denied such an undertaking, testifying instead that the Board agent had requested complete removal of timecards from the room that was to be used. On this basis Respondent established tables for manual clocking in and out of employees on May 7, and positioned them in the general path of employee movement into and out of the plant. Personnel Supervisor Billie Wells was designated to work the tables, assisted for the morning session by clerical employee Denna Harvell and for the afternoon session by Harvell plus Office Manager Darva Rollins. A 2,000 piece roll of "Vote No" stickers was available at the table.

This is the setting to which evidence pertains. The Nacogdoches plant employed over 700 persons working two shifts in highly structured operations whereby processed poultry and inedible byproducts were an end result. Organizational hierarchy below Boyd at times here material included John Kimmey as day-shift manager, Steve Wales as night-shift manager, John Griffin as supervisor of deboning, John Garcia as second processing superintendent with Christopher Seerey immediately under him as packing area supervisor, Weldon Moore as night-shift packing supervisor, and Betty Jordan as supervisor of the cut-up department adjoining the deboning tables. Kimmey's capacity included direct supervision of the plant services department in which at all material times Craig Lawson was employed as a lead person. The mission of plant services was quite varied, extending to outside janitorial work, unloading, trash hauling, and picking up or storaging of equipment at a remote area called farm 14 or simply the farm. Lawson resigned as its lead person during early April in lieu of demotion and was promptly replaced by newly hired Cliff Love, whose admitted supervisory jurisdiction as quality control manager included that of plant services. The lead persons other than Lawson involved at material times in the case were Bertha Gardner in deboning, Mina Johns in the boxmaking room, and B. J. Calhoun in IQF (individually quick frozen).

The deboning operation produces boneless chicken meat which employees accumulate in tubs. When full, these are taken to a scale for weighing and employee poundage credit, then deposited in 30- or 70-pound boxes for bagging and shipping. Pending fullness of either size box such a container might serve as an extra box to provide meat for others nearly full. An incentive plan provided that each week the deboner with most total weight would be permitted a day off with pay. Blackshire was working the third of three deboning tables, to which the least experienced persons were assigned.

She testified that upon arriving for work at or about 3:45 p.m. on December 11 she went outside the plant lunchroom and was there soliciting signatures to union authorization cards from certain other employees. At this point Wales appeared to ask what she was doing, and when told he angrily said that she should put the cards away. Upon his leaving she then went inside the lunchroom and talked to more employees before her own starting time. Blackshire testified that at the first break that evening she was soliciting employee signatures to union authorization cards in the lunchroom and Gardner approached saying that to start up a union could cause people to lose their jobs and cause a strike. Blackshire recalled that while this break was still in progress Griffin also approached her asking why she felt a union was needed, and stating that management wanted the plant to continue operating the way it was. On her second break of that evening Blackshire was in the shipping department to solicit an employee there, and was approached by whom she later identified as Moore. She testified that he told the employee she was facing that he should not sign up for the same union as before because it would just cause a bunch of confusion. This caused Blackshire to put the card away. As to these episodes, Wales fully denied Blackshire's testimony, while Gardner denied making any untoward remarks when once seeing Black-

shire with authorization cards while on a break. Moore testified that on several occasions in early December he saw Blackshire talking in his department while both she and his own employees were on working time. He denied hearing the subject of such conversations or seeing authorization cards in her possession. Moore asserted that he only contacted her to ask that she return to her assigned place. Griffin left Respondent's employ in mid-December, was thought to be residing out of State, and was not called as a witness.

As her shift of December 11 neared an end, Blackshire removed a piece of chicken meat from the extra box and put it in her own container. This was seen by Gardner, who asked Blackshire to return it to the scale. Shortly afterward Gardner took Blackshire to Wales' office where Griffin was present and Gardner later soon returned. Wales wrote out a termination slip for the "stealing" of chicken, and when Blackshire protested this terminology the word was rerecorded as "taking."

Regarding this termination, Wales testified that on December 10 he had written a "blue slip" (notice of disciplinary action) on Blackshire in which "loud talking, cursing, threatening remarks to fellow employees" were there listed as a combined first offense. He added as remarks that Blackshire must correct these traits or face more stringent discipline. Blackshire signed the document upon Wales' presenting it to her with a verbal warning that immediate correction of the problem was expected. Wales continued his testimony by recalling that, on December 11, Griffin reported to him about Blackshire having been seen taking already weighed chicken meat. Scale employee Martha Phillips and lead person trainee Betty Henderson were each called in by Wales and they countersigned a blue slip indicating each had seen Blackshire in such an act. Of the two persons only Phillips testified and she recalled seeing Blackshire take chicken on two occasions the night of December 11. Phillips told this to Henderson, who seemingly passed the word to Gardner and in turn Griffin was informed. Respondent produced evidence that over the short course of her employment Blackshire had intermittently screamed loudly at her work station causing acute momentary distraction among employees, had talked abusively and profanely to other employees, had regularly overstayed her breaks, had sexually teased and ridden the back of a retarded employee, had sought to debauch a Mexican-American employee, had vulgarly danced on lunchroom tables, had poked a second Mexican-American employee, had menaced custodial employee Terry Randall with a knife, and had threatened to "whip" Jordan for not transferring Blackshire's brother to more appealing work.

With respect to the issue of Blackshire's discharge and related 8(a)(1) allegations, I credit her testimony in particular over that of Wales, Gardner, and Phillips. As to each such witness for Respondent, an unconvincing demeanor was projected. This does not apply to Moore as to whom I believe the more accurate reconstruction of Blackshire's forays into the shipping department may be found. Such an exception does not diminish Blackshire's credibility in regard to her concerted activity on December 11 and her denials or explanation of other conduct which Respondent has here raised in justification of why she was terminated.

Blackshire credibly testified that Gardner would assign her tasks and on occasion grant time off without visible clearance through any higher authority. Gardner once cautioned Blackshire and others against excessive talk, adding the threat of a blue slip should they not obey. Given Gardner's several years of experience with Respondent, that she was previously a designated trainer of other employees, and that she admittedly was converted to supervisory status on December 17, a scant week after Blackshire's discharge, I conclude that her functioning within the deboning operation was so infused with the exercise of judgment and discretion as to the best utilization and deployment of personnel that it constituted her a supervisor as defined in the Act.[9]

On this basis I find adequate proof of the allegations contained in paragraph 7(a) of the complaint, portions of paragraph 7(b), paragraph 7(c), and the portion of paragraph 7(l) relating to Gardner, and I find that Blackshire's discharge was discriminatory as further alleged in paragraph 8. In this latter regard I am impressed that the litany of complaints now made against Blackshire is utterly unconvincing as forming a true basis for separation from employment, particularly the periodic screaming which was recalled by Calhoun as occurring several times a night. Had there been any bona fide concern with the phenomenon or with Blackshire's other lapses into peculiarity such a probationary employee would have been terminated long before her fourth week. The timing of Blackshire's discharge is also a factor since it occurred on the very day she commenced the type of activity that Palmer characterized as within his responsibility to combat, and in the context of only a single blue slip warning on a first offense (three are contemplated by the form itself) issuing the very day before. The supposed precipitating cause, whether unwarranted and aggravating in the scheme of deboning operations, was hardly a serious offense and Respondent's attempt to magnify it as "stealing" drains credence from its case. The most telling fact of all is found in a "smoking gun" whereby Wales and Phillips are totally at odds with respect to what person may have entered the lower left-hand corner printing on Blackshire's termination notice. On this point I credit Phillips, finding this to be the final indication of Wales' devious overall testimony. Respondent advances *Delchamps, Inc.* v. *N.L.R.B.*, 585 F.2d 91 (5th Cir. 1978), on this issue, but it is unavailing because here Wales himself was cloaked with prior knowledge of Blackshire's protected activity.

Aguirre testified that he was hired by Lawson, who appeared as an employment application was being filled out and commenced an interview. Lawson described the work to be done and the crew size Aguirre would be expected to join. Lawson solicited and arranged Aguirre's start of work that day. Several days after this Lawson voiced that he had just hired Juan Meza. Lawson's

[9] I reject the testimony of the seemingly confused and impressionable Cornalia Dolphus and Lulu Hunt, whose descriptions of events are unpersuasive because they appeared to be saying only what others have claimed as occurring.

power to hire was also established in the testimony of Willie Ray Scott, who described that his cousin, Danny Deckard, was so employed after perfunctory contact with Lawson.[10] Plant service employee Archie Thompkins credibly testified that Lawson issued blue slips to employees, while Scott recalled how Lawson allowed him to leave work early on occasion. Given this probative and uncontradicted testimony and Lawson's relatively autonomous identification with the plant services department, having only Kimmey as his own superior, it is apparent that he possessed and exercised several of the powers establishing one as a supervisor within the meaning of the Act.

In regard to the unfair labor practice conduct of which Lawson is accused, Aguirre testified that Lawson seemingly detected his union leanings and on an occasion in February remarked that Aguirre should be secretive about it or face being fired. Aguirre also recalled that later in February Lawson had solicited his interest in a higher paying leadman position, conditioning the possibility on disassociation from the Union. On March 6 this general pattern was repeated when Lawson drew Aguirre aside to advise him of a night cleaning foreman opening which Lawson used as a basis to implore Aguirre away from the Union. Thompkins and Scott each credibly testified that, on different occasions in March and April, Lawson had said that their interest in the Union had "messed up" their minds, making them less willing workers, and that the situation had tempted him to transfer them to more rigorous inside or packing work. On the basis of this uncontradicted testimony, I find adequate proof of the allegation contained in a further portion of paragraph 7(b) of the complaint, that remaining portion of paragraph 7(l) relating to Lawson, and paragraphs 7(m) and (n).

In further respect to paragraph 7(b) of the complaint, Aguirre testified that, on April 23, Kimmey took an occasion in his office to ask what departments had such problems as might cause the employees to want representation. When Aguirre said that problems were rampant, Kimmey stated that a union was not wanted. Thompkins' testimony was that around mid-March Kimmey spoke to him privately asking whether Aguirre had been talking about the Union. Scott corroborated that, also testifying that in March Kimmey had asked how he planned to vote. I credit these witnesses of the General Counsel on the point and reject Kimmey's denials of having made the described utterances, thus finding further adequate proof in support of paragraph 7(b). A final aspect of paragraph 7(b) is that Tutt credibly testified to being questioned by Garcia about why he favored the Union and why Seerey, also present, could not persuade him away from it. Garcia could do no more than fail to recall this episode and I therefore find support for the remainder of this allegation.[11]

As to preelection speeches to assembled employees, Tutt testified that Palmer said the company-sponsored vanpool service from Lufkin would be discontinued if the Union won the election, but if it lost Respondent would consider dropping the charge for any day on which the employee rider did not show up. Tutt added hearing Palmer say that people would not be able to transfer back to Lufkin if the Union won the election, but if it lost a return transfer would be allowed carrying full seniority and only a small drop in pay. Tutt's further recollection from the meeting he attended was that Palmer had said all wages would start from zero and all benefits would be dropped should the Union win. Inez Matthews, a recently retransferred Lufkin employee, testified that in her meeting of early May Palmer said the employees would take a chance on losing benefits and obtaining a transfer back to Lufkin if the Union won. He contrasted this with the Union's losing by saying that in such an event the employees so desiring would transfer back to Lufkin with raises and benefits.

Palmer's version is that in regard to the vanpool program and propagandizing against the Union with charts he completely avoided any impermissible remarks. Palmer had openly included within his responsibilities the conduct of "antiunion campaigns." In this context Palmer testified that the subject of van usage arose with employee questions and he said only that the program did not depend on whether the Union was chosen. Palmer denied that he conditionally offered to drop the charge for unused days, testifying instead that he reiterated how riders were considered to have "reserved" a seat for a week of transportation, and that the cost stemmed from this fact regardless of whether some absence arose from personal reasons. Palmer testified that he contrasted the situation to a contemporaneous problem of sand infiltrating the plant's water supply causing an interruption of production with attendant showup pay granted to employees. On these occasions, as he explained it, employees were not charged that week for such a special reason. Palmer testified on the subject of Lufkin transferring by saying that this too commonly arose from employee questions, and that his response was to assure them that the original commitment to the Lufkin employees was that should their plant reopen they would have first choice about a transfer back. Palmer added that he said he did not know what would happen about such transfers should the Union win the election because it would be a subject of negotiations. He added that he explained to employees that when the plants were both unionized transfers were not allowed

[10] This is corroborated in more detail by Deckard himself, who recalled that Lawson talked about the job with him, referred his application to personnel, demonstrated certain job duties, and confirmed when Deckard should commence work. I credit this narrow aspect of Deckard's memory and his further recollection of Lawson's instrumental role in his discharge about a month later, finding other aspects of his fanciful testimony unworthy of belief. Additionally, I note that Wells testified how she alone was instrumental in the hire of Deckard, a version that I discredit both because it is intrinsically implausible and because Wells herself admitted the rather telling fact that Lawson had evaluated Deckard as "fine" for the job opening.

[11] Thompkins testified that in April, while working in the box room, Johns had remarked that she was commissioned to find out how employees would vote. Johns credibly explained that her remark was only made as a joke after persistent needling by Thompkins and others, but more importantly that her role as a lead person was confined to overseeing two other employees regularly in the box room in a manner devoid of supervisory authority. For these reasons I find Johns not to be an agent of Respondent, and that her otherwise innocuous remarks are not attributable to it.

between the two locations.[12] In completing his talks, Palmer used a series of 2- by 2-1/2-foot-wide charts prominently lettered with benefits then in effect for employees. He routinely capped this display with a blank poster of the same size terming it a reflection of what the Union had obtained for employees to date.

In regard to these speeches and the discussion they may have generated, the portion of the case involving complaint paragraphs 7(h) through (k) and Objections 15 through 19 are involved. As to verbalisms in dispute I discredit Tutt, and, although Matthews had a favorable demeanor and sincerely appeared to be searching her memory, I believe that she is not the better source of the truth. It must be noted here that she and Tutt were in conflict over whether or not Palmer had footnoted his remarks about a transfer to Lufkin with the thought that a pay reduction would or would not accompany it. On this point I credit Palmer in particular regard to the vanpool program and find that he did not threaten an actual loss of benefits or futility in voting for the Union. On the matter of Lufkin transfers I similarly reject the testimony of the General Counsel's witnesses and am left with the more intriguing admission that Palmer said it might depend on future negotiations. While a more noble reassurance might have been in order the situation was adversary in nature, and on balance I cannot conclude that Palmer's statement was either an unfair labor practice or conduct improperly affecting an election. It would be completely normal for any negotiations to resolve terms of employment dealing with transfers between two proximate facilities of the same company, particularly where a bargaining history was not too remote in point of time. This subject evolves to a factual issue, and on that plane I do not find any actionable conduct.

Before turning to matters that are to be resolved exclusively on the basis of the Union's objections I first treat the matter of Tutt's discharge. Respondent's defense on this issue keys to the testimony of employee Betty Rhoudes coupled with certain background evidence. Rhoudes has worked in Respondent's packing department since June 1979 with duties in IQF (individually quick frozen) that commonly brought her in contact with Tutt. At quitting time on May 2 Rhoudes, who is white, was washing up preparatory to leaving work. She testified that Tutt, who is black, approached her saying, "I sure am tired," and that then, after walking away momentarily, he returned to say, "That white stuff sure does look good, I sure would like to have some of that. That big black thing sure would feel good inside you," to which Rhoudes "kind of pushed him away." She then started out but was caught up with by Sandra Wells, another packing department employee, who had seen the incident and, while not being able to hear what was said, observed, that it left Rhoudes very upset. Wells asked what had happened, was told, and immediately prevailed on Rhoudes to report the matter to Palmer. This was done and on the following workday, Monday, May 5, Rhoudes was called into the office of Boyd with Kimmey and Wells also present and asked to repeat the remark, thereafter writing it out with the assistance of plant nurse Colleen Upchurch.[13]

Wells also testified for Respondent that at the noontime lunch break on May 2 she had seen Tutt sitting in a parked car drinking what appeared to be beer and smoking familiar smelling marijuana. To add still more dimension to Respondent's action at the time, Wells testified that within the previous 60 days Tutt would sometimes decline his duty of lifting boxes and instead asked that she slow down the pace of her work. Wells had reported this to Seerey. Patricia Tindall is another white female employee in the packing department. She testified that around April Tutt had once spoken to her in the lunchroom saying she had a nice body which would look good naked, and it left him wanting to get in her pants. Tindall answered that she did not go with black men and when Tutt walked off reminding her she could change her mind Tindall gestured with her fist to end the incident. She added that on two or three later occasions Tutt said "little things" of similar import.

Seerey testified that he was Tutt's immediate supervisor, and that Tutt's expected duties were to be in the IQF room as an aide, lifting boxes on and off conveyer belts, working the scales, and occasionally moving pallets. Calhoun was Tutt's lead person and she testified that upon once asking Tutt to move boxes he called her a "motherfucker," while another time Tutt had recklessly barged through a swinging plant door with his pallet jack and almost knocked over another employee. Calhoun added that Tutt was frequently late returning from his lunch break and that she periodically reported this to Seerey. Respondent produced written warnings against Tutt over the signatures of Seerey and Boyd dated April 8 and May 1, which respectively recorded the name calling and hazardous "cutting up." On the former occasion Tutt had defied Seerey but did agree to speak with Garcia, which was done although the reprimand stood. Garcia's own testimony picked up with May 2, a day on which he called Tutt in for a discussion of his behavior and specifically whether he had been drinking or smoking marijuana that day. This agitated Tutt to the point that Garcia brought in Tutt's mother-in-law, another lead person at the plant, and after more discussion Tutt was calmed down.

The handling of Tutt's discharge was described most fully by Palmer. He acted on Rhoudes' report by speaking with Boyd and asking that this official satisfy himself of the facts by speaking with "the two ladies in question." When Palmer himself arrived at work around 9 a.m. on May 5, Boyd handed him a copy of Tutt's termination notice. Boyd did not testify, while Tutt recalled that a search for his missing timecard led him to Garcia, Clayton, and then Boyd's office. He waited there for about an hour, including a time when Kimmey came by affirming that Boyd wanted to talk with him. Wells and Rhoudes were with Boyd and ultimately Garcia joined

[12] This testimony is expressly denied by Lewis, who characterized any earlier collective-bargaining agreement as "silent" on the subject. No party offered prior agreements into evidence.

[13] In regard to Aguirre's testimony that Upchurch had once made inquisitive remarks respecting union activity among employees, I attach no significance to this because it is grounded on nothing more meaningful than that she had temporarily exercised hiring responsibilities during November.

them, soon coming out to advise Tutt that he was terminated. Tutt expressly denied ever being spoken to by Boyd about the incident, one in which he termed Rhoudes as "lying" because at quitting time on May 2 he had only asked about a supposed argument she had just finished having and whether her anger with "one black dude" meant she had to take it out on all blacks. Tutt did add that she pushed around him saying she wanted to be left alone and to get home. Other than this the only personal comment Tutt recalled ever making to Rhoudes was in early April when he asked her out. As to other accusations, Tutt explained that the pallet jack incident was practically unavoidable because the door in question had obscured visibility through the dingy plastic windows and was at the crest of an inclined aisle. Tutt did admit to "cussing" once and that Seerey spoke to him, leading to a further meeting with Garcia. He denied drinking or smoking marijuana at the time described by Wells. He did not, however, deny Tindall's testimony, nor was it even alluded to when Tutt was called on rebuttal.

After Tutt was discharged, Palmer answered a union handbill on the subject by posting a memo to all employees dated May 6, explaining that the termination had been because of intolerably "abusive behavior" to other employees. In its statement of position and brief, Respondent argues that Tutt's action contravened the EEOC's Interim Guidelines on Sexual Harassment as promulgated on March 11 in 29 CFR § 1604.11(a).[14] Palmer had these drawn to his attention when a client newsletter dated April 17 from the Fulbright & Jaworski law firm alluded to the guidelines and excerpted significant passages. He testified to reading them when received and utilizing such information in the course of performing his duties.

I credit the central testimony of Rhoudes, believing that by demeanor and inherent likelihood standards she has clearly remembered and accurately reported what was said to her by Tutt on the afternoon of May 2. As to this portion of his testimony, I discredit Tutt because of a persuasion that he was first of all not totally possessed of clear faculties at the time, and secondly to this extent has shown no inclination to divulge the full reach of his mood or remarks. It may thus be said that Tutt had literally breached the letter and spirit of the interim guidelines. However, I nonetheless find that the General Counsel has made out a *prima facie* case on this issue. As with Blackshire many months earlier, Respondent showed a remarkable tolerance for obstreperous or marginally insubordinate behavior until such a point as the individual in question became a known union activist. Here, as intended, Tutt became a known figure in the Union's soon-to-culminate organizing drive when the handbill was released on April 28, and the timing of any near immediate discharge in such circumstances dictates close scrutiny of surrounding facts. It has been established through Wells that on another occasion a female employee has had to shove "an old boy away," even beyond what Tindall testified about. More significantly, Palmer did not testify that he mentioned the factor of guidelines and an employer's exposure to strict liability thereunder, nor was the actual conduct hinted at in his memo to all employees the following day. The most critical indicator is that Boyd did not even confront Tutt with the accusation, a peculiar lapse given that Tutt was a rehired person of further service with Respondent and that Garcia had been patronizingly tolerant of his job attitude. On a contested evidentiary point Respondent has listed 10 discharges for cause shown from its records in the period February 1–June 17, covering as to reasons intoxication, abusive language, destruction of property, drinking or being under the influence of alcohol, insubordination, and cursing. I give little weight to such for Respondent has shown itself in the Blackshire case capable of unlawfully discharging an employee for reasons protected under the Act and I infer from the varied violations of Section 8(a)(1) committed by Respondent's agents and the timing of Tutt's discharge that it did so again. The guidelines theory presents itself as a pretextual afterthought, and, while the utterance that Rhoudes dismayingly experienced is not to be condoned, I must look beyond that to the wrongful motive believed truly to be present. Cf. *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

This resolution, *ipso facto*, warrants setting the election aside on the basis that Objection 1 is sustained as an evident instance of conduct direly affecting an election of that very week in which the unfair labor practice was committed and extensively publicized as each side sought partisan advantage from the matter. I will, however, fully treat such remaining objections as are not subsumed by allegations of the complaint or in the case of paragraphs 7(f) and (g) have yet to be set forth factually and analyzed. The first of these concerns Tutt being escorted into the voting area by the husky, 6-foot 3-inch tall, shirt and slack uniformed Page. Upon Page's stepping inside, the Board agent promptly directed Page out and he complied by returning through the construction area where he remained until Tutt had voted and emerged, at which point they casually walked together back to the gate. Page had entered the voting room by no more than two steps and was only momentarily inside. Aguirre, present there as a union observer, testified that Page first parried the Board agent's challenge by saying he had orders to "stay with" Tutt, and this caused the Board agent to raise his voice in repeating the directive and to turn red faced. This version of the facts most favorable to the Union falls short of establishing that any voter present would reasonably absorb concern over the exchange or that the election process was otherwise tainted by the fleeting presence of this familiar nonsupervisory figure.

[14] In the guideliness, harassment on the basis of sex is proposed to be defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" which might, among other characteristics, have the "purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." The guidelines proposed to apply Title VII principles whereby an employer might be responsible for acts of sexual harassment in the workplace by persons other than agents or supervisory employees where it "knows or should have known of the conduct." An exculpatory provision upon which Respondent here relies is that an employer might rebut apparent liability for such latter acts upon "showing that it took immediate and appropriate corrective action."

For this reason, I recommend that Objection 3 be overruled.

The check-in table of election day with its supply of "Vote No" stickers engendered considerable testimony. Aguirre was the lead witness asserting that at the afternoon session he watched Billie Wells (not known to him by name at the time) place stickers on the clothes of three Spanish-speaking employees after Aguirre had furnished them each a "Vote Yes" sticker when they were passing toward the plant's premises. On the basis of Butler's testimony the Union presented photographs of the scene as evidence allowing a better understanding of how the check-in tables were first and later positioned. Butler himself observed both men and women functionaries of Respondent placing "Vote No" stickers on employees as they came through the gate. He recalled hearing Wells tell one employee to wear the sticker and also to be sure to actually cast a "No" vote. In the course of this entire day Butler neither heard any employee ask for a sticker nor protest its placement, but in the afternoon he was close enough on one occasion to watch Palmer place a sticker on Angel Acevedo and three other identified employees to whom Palmer directly said the sticker should be worn.

Wells testified to happenings at the table saying it was intended as a checkpoint where in-and-out working time could be recorded since the timeclock was not available. She recalled placing only one "Vote No" sticker on a person who had asked that it be done because his arms were full. She had not seen Palmer at the intermittent times he was present place such a sticker on anyone, nor had she seen any "Vote No" placed over a "Vote Yes." She knew the three employees covered by Aguirre's testimony, Espinoza, Rodriguez, and Duarte, and denied seeing anyone place a sticker on them or doing it herself. Rollins, who worked the afternoon session only, testified that Aguirre or at least Lewis was handing out "Vote Yes" stickers to approaching employees and that she herself only placed stickers on one occasion, this being on a woman who wanted one both front and back. Rollins denied that any person was offered a sticker without first asking for it. Palmer thought it likely he had distributed stickers but only to persons asking for them. His total presence immediately at the table on election day was estimated at no more than 30 minutes and he was otherwise some distance away for only an additional 35-minute period. He expressly denied overlapping any "Vote Yes" sticker or that he forced one on any objecting employee.

This activity is traceable to Respondent's unilateral action in creating the check-in configuration after its counsel had agreed to an alternative step the prior day. The Union has not, however, pointed to any controlling authority that would render this action abstractly objectionable, nor does Aguirre or Butler persuade me that employees were somehow being dismayed by the overall procedure. Not a single witness was advanced from among the hundreds passing that day to describe more intimately how the roll of stickers might have been exploited to Respondent's advantage. Objections 4 and 5 therefore lack factual support and I recommend that they be overruled, proposing too that paragraph 7(f) of the complaint be dismissed.

Aguirre testified in support of Objection 6 that in early May he was handbilling at shift change time by the plant gate after his own work hours. Aguirre found it convenient to station himself quite close to the gate so as to better meet dispersing employees. While Aguirre was doing this, Kimmey drove out in an automobile and paused to say that handbills should not be passed out in that fashion right at the gate. Aguirre answered that he was on his own time and Kimmey drove off saying he should not go beyond (inside) the gate. Kimmey's testimony is that he had observed Aguirre walking in and out of the entranceway and that he remonstrated Aguirre about going back inside because of company policy under which they "prefer" that a clocked-out employee not remain on the premises. Kimmey recalled that at the time other persons were passing union handbills at the edge of the street and he said nothing to them.

Tri-County Medical Center, Inc., 222 NLRB 1089 (1976), is applicable here. The Board narrowly construes rules which interfere with union activity under colorable justification of regulating off-duty employees' presence. The validity of any rule denying off-duty employees entry to outside nonworking areas such as gates is lost where business reasons for the rule do not exist or it is disparately applied. Respondent has not set forth any justification, while Kimmey admitted that off-duty employees pass in and out daily notwithstanding that a guard "try[s]" to prevent it. This shows a lack of resolve tantamount to nonenforcement, and Kimmey singling out Aguirre under the circumstances constitutes the sort of vitiating disparity that a narrow construction does not permit. Further, there is no evidence that the rule was ever generally communicated to employees and the entire situation readily permits a conclusion that it was unlawfully applied. I therefore recommend that Objection 6 be sustained, and find factual support for paragraph 7(g) of the complaint.

Objections 7 through 10 deal with the release procedure for voting. Designated union observers were Aguirre, Bobbie Sanders, and Ethelene Forney, while Respondent used Betty Hargraves, Ramona Sandoval, Linda Keggler, and, under the circumstances previously described, Carol Clayton. In the course of each voting period Clayton, Aguirre, and Sandoval would constitute themselves a team to range throughout the plant and maintain a flow of voters by approved announcement of voting entitlement. Aguirre testified that, when reaching a component of Garcia's department, this supervisor deliberately usurped Clayton and, directing his voice to persons wearing "Vote No" insignia, told them it was time to go and vote. Neither Clayton nor Garcia agreed with this characterization, and, referring to the incident as one involving "nibble" department employees, they described it as being nothing more than Garcia's voice reading out the instructions rather than that of Clayton, and without conscious or successful direction of the advice to any particular affinity group. In other departments Aguirre observed that Clayton hugged employees. She denied this saying only that she sometimes had to

touch employees in transcending noise levels and that she did greet her son-in-law when meeting him in the rounds. When reaching Maintenance Supervisor Buddy King, Clayton told him to go to his scattered employees and tell them to vote. Aguirre and Clayton conflict in their further testimony as he denied releasing any maintenance employees while she recalled doing so personally with a substantial number of those officially in the department but found throughout the plant as might be expected of their function. I credit Clayton as to these points of fact, and conclude that nothing about the release procedure went beyond ordinary human frailties given the excitement of the moment, nor did the matter in any way undermine the validity of the secret-ballot process. Accordingly, I recommend that Objections 7 through 10 be overruled.

Respecting Objection 12 the Union principally relies on *Summa Corporation d/b/a Frontier Hotel* v. *N.L.R.B.*, 625 F.2d 293 (9th Cir. 1980), as authority for holding that an election should be set aside where there is insistence on an imbalance in observers. As Respondent has pointed out, *Summa* is distinguishable because a direct breach of stipulated election details had occurred there. Respondent's tactics in suddenly advancing Clayton as a useful intermediary to employees are not worthy; however, the circumstances do not show it to have interfered with the election process. Cf. *National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital*, 251 NLRB 842 (1980). I therefore recommend the overruling of this objection.

Aguirre testified in support of Objection 14 by recalling that as he arrived for the second voting session Page told him apologetically that he had orders to keep him out until voting time and that he should stay with other union representatives. When the time neared 2 p.m., Aguirre did go in, finding other union observers at the polling place as well as all company observers. He had seen the people go in earlier without any challenge or accompaniment by the guard. Page testified that he was instructed to let both groups of observers back into the plant for the afternoon session as separate groups. It was because of this that he stopped Aguirre, Page adding that he did not knowingly permit an observer of either party to pass inside. He recalled particularly holding one female company observer back whom he recognized upon her arrival, and that she remained in place until Palmer came up and remarked that the observers could enter. At this point Page "hollered" at Aguirre and he recalled that Aguirre thereupon went through in the company of Butler and Lewis. This objection appears as nothing more than an innocuous breakdown in communication, and with the Union pointing to no compelling authority on the point I recommend that it be overruled.[15]

Aguirre is also the person involved in the Union's final objection, one that contends he was transferred to a "less desirable" job because of his union activities. Aguirre testified that on the probable date of April 29 he was informed by Love of a transfer to the farm where his required tasks were to sort and move scrap metal pieces. Aguirre described it as hot outside work without drinking water or toilet facilities. He remained working there until May 8 when he went back to past regular work as a trash truck driver. After finishing the week in routine plant service duties he took a short leave of absence and then resigned.[16] Although Aguirre had once volunteered to work a day at the farm to earn overtime pay, he credibly testified that no one else had ever been sent there to work for more than what would be involved with a truckload of scrap material. Love did not testify as to why Aguirre may have been so specially needed at the farm during this period and Palmer, while alluding to the area as one to which plant service employees might be sent, also advanced no reason. It was established from Aguirre that he translated job instructions to certain Spanish-speaking employees for at least a part of the time he was so assigned, yet the total subject is amorphous as to its facts except that Aguirre was abruptly sent to that remote place immediately after exposing himself as a key union adherent. On balance, the action must be inferred to be retaliatory and Aguirre's prominence would have made it likely that this view would permeate the work force. I thus add Objection 24 to those recommended to be sustained.

My conclusions of law are that Respondent, by discharging Regina Blackshire and Mack Tutt, by interrogating employees about their union activities and the union activities of other employees, by threatening its employees with adversity if union activities were pursued, by seeking to prevent discussion of the Union on breaktime and warning that organizing attempts would be futile, by threatening that the advent of the Union or pursuit of union activities would only result in a strike or loss of employment, by prohibiting access to outside nonworking areas of the plant's premises by off-duty employees engaged in the distribution of union literature, by promising employees a wage increase if they would forsake the Union, and by threatening to transfer employees to less desirable jobs because of their apparent involvement in the Union's organizing campaign, has by such conduct engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act; but that it has not violated the Act in any respect other than as specifically found.[17]

The Union has separately prevailed on Objection 24 and in conjunction with the General Counsel's evidence

[15] Its strongest argument in briefing the matter is that the circumstances were "designed to intimidate the employees." There was no evidence of such a design, nor that the configuration of movements was particularly noteworthy among employees, let alone being intimidating.

[16] I have considered Respondent's success in eliciting from Aguirre that in an investigatory affidavit given May 20 he mistakenly or ambiguously referred to May 19 as the date on which he returned to a regular job. Recognizing the oddity of such an error, I nevertheless am satisfied that demeanor and the probabilities of the situation are such that Aguirre should be credited in most salient regards as I do.

[17] I decline to add an independent violation of Sec. 8(a)(1) in regard to Aguirre's temporary transfer to the farm, this being the subject of Objection 24, on the basis that the interrelationship of advocacy roles as between the General Counsel and the Charging Party was assiduously established during the course of the hearing and, while the General Counsel took various opportunities to successfully amend the complaint, he made no attempt to do so in this regard. I do not therefore consider it a fully litigated matter for purposes of the consolidated unfair labor practice cases, and otherwise believe such a finding would be awkwardly cumulative to the case as a whole.

has shown merit to Objections 1, 6, 20, 22, and 23. All such happenings were within the critical period which commenced March 10 and amply impacted on the election process as to entitle the Union to substantive relief. Settled doctrine provides, "Conduct violative of Section 8(a)(1) is, *a fortiori*, conduct which interferes with the exercise of a free and untrammeled choice in an election." (Tutt's discharge is itself derivatively violative of Sec. 8(a)(1)). *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782 (1962). Accordingly, I recommend that the election of May 7 be set aside and that a second election be directed. Cf. *Concord Furniture Industries Inc., d/b/a Bradford Furniture Company*, 241 NLRB 643 (1979). The Union has consistently sought to have its relief embody the ordering of an off-premises election. Such an undertaking is irregular and expensive and involves an extraordinary commitment of agency resources and personnel. Fundamentally, the basis of setting aside this election is not particularly different from many others routinely done where warranted by the facts. The novelty of an off-premises election would be a departure of such magnitude that I would adopt the request only on a most compelling basis. Obviously my opinion is that Respondent has wrongfully exploited the election process as undertaken on its own premises in the customary manner of several decades' experience under the Act. I do not, however, believe that I am best equipped to make the final assessment of the request. Rather, it is the province of the Regional Director to monitor all matters that impinge, or are seeming to do so, on the imminency of such second election as shall be scheduled and to determine at the outset, or as the passage of time might reveal, whether any dynamics are at work as would make an off-premises election the more appropriate course. I do, however, recommend extension of the notice posting to the Lufkin plant because many of the employees affected by Respondent's unfair labor practices are now located there.

Disposition

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[18]

The Respondent, Herider Farms, Inc., Nacogdoches, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or in any other manner discriminating against employees because of their activities on behalf of United Food and Commercial Workers, AFL-CIO, Local 540.

(b) Interrogating employees about their union activities and the union activities of other employees.

(c) Threatening its employees with adversity if union activities were pursued.

(d) Seeking to prevent discussion of the Union on breaktime and warning that organizing efforts would be futile.

(e) Threatening that the advent of the Union or the pursuit of union activities would only result in a strike or loss of employment.

(f) Prohibiting access to outside nonworking areas of the plant's premises by off-duty employees engaged in the distribution of union literature.

(g) Promising employees a wage increase if they would forsake the Union.

(h) Threatening to transfer employees to less desirable jobs because of their apparent involvement in the Union's organizing campaign.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Regina Blackshire and Mack Tutt immediate and full reinstatement to their former positions of employment or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered due to the discrimination against them by paying them what they would have earned, less net interim earnings, plus interest, in the manner provided in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[19]

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Nacogdoches and Lufkin, Texas, plants copies of the attached notice marked "Appendix."[20] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent or an authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent to taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed in all other respects.

IT IS FURTHER ORDERED that the election of May 7, 1980, be set aside and that a second secret-ballot election

[18] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[19] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[20] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

be held on a basis to be determined by the Regional Director.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge or in other manner discriminate against employees because of their activities on behalf of United Food and Commercial Workers, AFL–CIO, Local 540, or any other labor organization.

WE WILL NOT interrogate employees about their union activities and the union activities of other employees.

WE WILL NOT theaten employees with adversity if union activities are pursued.

WE WILL NOT seek to prevent discussion of the Union on breaktime or warn that union attempts will be futile.

WE WILL NOT threaten that the advent of the Union or the pursuit of union activities will only result in a strike or loss of employment.

WE WILL NOT prohibit access to outside nonworking areas of the plant premises by off-duty employees engaged in the distribution of union literature.

WE WILL NOT promise employees a wage increase if they forsake the Union.

WE WILL NOT threaten to transfer employees to less desirable jobs because they are apparently involved in an organizing campaign of United Food and Commercial Workers, AFL–CIO, Local 540, or any labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights protected by the National Labor Relations Act.

WE WILL offer Regina Blackshire and Mack Tutt immediate and full reinstatement to their former positions of employment, without prejudice to their seniority or other rights and privileges, and make them whole for losses in pay resulting from their having been discharged, with interest.

HERIDER FARMS, INC.